

JAMES W. BULLARD
HAROLD W. BULLARD

IBLA 85-217

Decided April 29, 1986

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring lode mining claim null and void ab initio. A MC 77136.

Affirmed.

1. Mining Claims: Lands Subject To--Mining Claims: Withdrawn Land

BLM may properly declare a mining claim null and void ab initio where it was located at a time when the land was withdrawn from mineral entry by Secretarial order of Dec. 14, 1904, issued pursuant to sec. 3 of the Reclamation Act of June 17, 1902, 32 Stat. 388.

APPEARANCES: James W. Bullard and Harold W. Bullard, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

James W. Bullard and Harold W. Bullard have appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated November 28, 1984, declaring the Little Squaw lode mining claim, A MC 77136, null and void ab initio.

Appellants' mining claim was located February 25, 1971, in unsurveyed sec. 23, T. 12 N., R. 5 E., Gila and Salt River Meridian, Yavapai County, Arizona, within 1 mile of the Verde River, and filed for recordation with BLM on October 17, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). 1/ In its November

1/ The map submitted with appellants' notice of location places the claim within 1 mile of the Verde River, according to the scale identified on the map. The claim is depicted on the map as having a northeast-southwest axis whereas the description on the location notice indicates a north-south axis. On July 9, 1983, James W. Bullard amended the location of the claim and filed an amended notice with BLM on July 14, 1983. The description of the claim in the amended location notice appears to conform with the placement of the claim on the original map. In both the original and amended location notices, the claim is generally described as situated 1 mile in a northwesterly direction from the Brown Springs Ranch and about 17 miles south of Camp Verde, Arizona. Thus, the amended location does not appear to have resulted in a shift in the location of appellants' claim on the ground.

1984 decision, BLM declared appellants' mining claim null and void ab initio because the land was "not open" to mineral entry at the time of location of the claim, by virtue of a first form reclamation withdrawal. By order dated December 14, 1904, the Secretary of the Interior withdrew "from all forms of disposition" a 1-mile strip of public land on either side of the Verde River within T. 12 N., R. 5 E., Gila and Salt River Meridian. Arizona, citing as authority section 3 of the Act of June 17, 1902, ch. 1093, 32 Stat. 388 (1902), repealed in part, Federal Land Policy and Management Act of 1976, P.L. 94-579, § 704(a), 90 Stat. 2792.

In their statement of reasons for appeal, appellants contend that their mining claim is located more than 1 mile from the Verde River "according to [their] best information." Appellants state that they "intend to obtain qualified surveying data which will establish that the above claim is located at a distance greater than one (1) mile from the Verde River."

The record indicates that pursuant to appellants' request for an official survey of their lode mining claim, the Acting Chief Cadastral Surveyor of Arizona, BLM, by order dated July 5, 1983, directed the preparation of a mineral survey (No. 4855). Subsequently, by letter dated July 26, 1983, the Chief Cadastral Surveyor of Arizona, BLM, informed appellants' attorney that "[u]nless you request us to do otherwise we will, after September 1, 1983, cancel the order for survey" because of the first form reclamation withdrawal. Enclosed with the letter was a copy of the withdrawal order. The letter also stated that "initial measurements" by the mineral surveyor had determined that the claim was within 1 mile of the Verde River. On August 12, 1983, appellants' attorney requested cancellation of the survey order. The order was cancelled on August 22, 1983.

[1] It is well established that a mining claim located on land which is closed to mineral entry at the time of location by virtue of a first form reclamation withdrawal is null and void ab initio. William B. Rawlings, 85 IBLA 243 (1985); Homer Owens, 81 IBLA 402 (1984), and cases cited therein. Appellants have presented no evidence, other than their unsupported speculation, that the Little Squaw mining claim is not situated within 1 mile of the Verde River and, thus, not covered by Secretarial order of December 14, 1904, withdrawing the land from all forms of appropriation. Accordingly, we conclude that BLM properly declared appellants' mining claim null and void ab initio. 2/

2/ On Apr. 12, 1985, Kenneth Carter, who asserts that James W. Bullard assigned the Little Squaw mining claim to him by agreement dated Sept. 20, 1983, filed an application to restore the land included in the claim to mineral entry pursuant to 43 U.S.C. § 154 (1982) and 43 CFR Subpart 3816. BLM may consider this application when the case is returned to it. See generally, Robert Limbert, 89 IBLA 131 (1985); Joe Ashburn, 66 IBLA 328 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

Bruce R. Harris
Administrative Judge

